

BEFORE THE  
SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL )  
DEVELOPMENT PERMIT DENIED BY )  
SAN JUAN COUNTY TO )  
WEST SOUND MARINA, INC., )  
WEST SOUND MARINA, INC., )  
Appellant, )  
v. )  
SAN JUAN COUNTY, )  
Respondent. )

SHB No. 84-2

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, a request for review of conditions placed on a shorelines substantial development permit for revising existing dock and float arrangements in a commercial marina, came before the Shorelines Hearings Board; A. M. O'Meara, Rodney M. Kerslake, Nancy R. Burnett, Lawrence J. Faulk, David Akana and Gayle Rothrock (presiding), at Lacey on March 28, 1984. Court Reporter Kim Otis recorded the proceedings.

Appellant marina was represented by William J. Bender, attorney.

1 Respondent county was represented by its Prosecuting Attorney, Eugene  
2 H. Knapp.

3 Witnesses were sworn and testified. Exhibits were admitted and  
4 examined. Argument was heard. From the testimony, evidence, and  
5 contentions of the parties the Board makes these

6 FINDINGS OF FACT

7 I

8 Appellant business firm is a commercial boat marina on West Sound  
9 at Orcas Island. The marina has been in existence there for 30 years  
10 and has periodically expanded. It now offers full-time and part-time  
11 moorage and provides for fueling and hull and engine repair. One  
12 hundred and fifty boats can be docked there and a demand exists for  
13 moorage space for larger boats, which demand cannot be now  
14 accommodated. The marina is in an aquatic designation adjacent to a  
15 suburban shoreline designation as set forth in the San Juan County  
16 Shoreline Master Program (SJCSMP).

17 II

18 The marina is located near two small islands, the closest of which  
19 is Government Island. The other island, Picnic Island, is inhabited  
20 by one man. There is an adequate boat passageway between the marina's  
21 south breakwater and the nearby Government Island.

22 Winds in that area of West Sound blow stiff to the southwest  
23 corner of the marina, the area where alterations in moorage floats are  
24 desired by the marina owners.

25  
26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW & ORDER  
SHB No. 84-2

1 III

2 Substantial development permits for the marina have, in fact, been  
3 issued in 1973, 1975, 1979, and 1982. One of the recent expansions by  
4 permit came up for review by the Shorelines Hearings Board in 1979  
5 (SHB No. 79-32).

6 After Board review, the final permit in 1979 established the  
7 southern breakwater at a length and at a distance from Government  
8 Island which would preserve an adequate channel of navigation. That  
9 configuration has continued to permit safe passage in the  
10 critical--navigation channel south of the breakwater.

11 IV

12 In June of 1983, West Sound Marina, Inc., applied for another  
13 substantial development permit to install an existing 37-foot by  
14 100-foot covered moorage and revise the existing dock and floats. The  
15 attached engineering drawing indicates proposed removal of some floats  
16 and adjacent replacement by longer floats in the southwest corner of  
17 the marina and a proposed emplacement of three 3-pile dolphins out  
18 from the southwest corner to anchor one large covered moorage.

19 Proper notices about the proposal were published and the customary  
20 planning staff review of the application by San Juan County occurred.  
21 A public hearing was then held by the County Commissioners on the  
22 application and extensive oral and written comment was received.

23 V

24 Respondent county became convinced the placement of the 37-foot by  
25 100-foot covered moorage at the proposed site was not in keeping with

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW & ORDER  
SHB No. 84-2

1 the San Juan County Shoreline Master Program and the state's  
2 Shorelines Management Act. The respondent also became convinced that  
3 no southern side floats should extend beyond the inner  
4 line-of-extension from the southern breakwater, based on their  
5 interpretation of this Board's in SHB No. 79-32.

6 The proposal and application was not amended or requested to be  
7 amended during the pendency of the application before the county.  
8 Several added markings on some copies of the application induced a  
9 "footprint" of the proposed covered moorage part of the project on the  
10 application, however.

#### 11 VI

12 San Juan County issued a decision on November 1, 1983, denying the  
13 covered moorage emplacement, but allowing rearrangement of floats  
14 provided the applicant submit a design revision showing floats not  
15 extending beyond the lines of existing development. An L-shaped  
16 "limits of expansion" line was drawn by the County on a copy of the  
17 engineering drawing from the application and attached to its decision.

#### 18 VII

19 Appellant's legal counsel thereafter submitted a letter proposing  
20 a revised plan for rearrangement of floats and dock and requesting  
21 limited reconsideration of their decision on limits of expansion.  
22 Appellant asked permission to revise and expand the dock and floats at  
23 the west end of the southerly float. He felt the southerly expansion  
24 limit line drawn by the county--out from the breakwater--would shorten  
25 two of his proposed long floats from 60 feet to 40 feet and not allow

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW & ORDER  
SHB No. 84-2

1 him to meet the demand he perceived for large boat moorage.

2 VIII

3 The county did not grant reconsideration. On November 22, 1983,  
4 the Board of County Commissioners signed the permit and its written  
5 findings and conclusions in accordance with their motion approval of  
6 November first. The permit was received by the Department of Ecology  
7 on December 6, 1983.

8 Appellant West Sound Marina appealed the written conditioned  
9 approval of Shorelines Substantial Development Permit, No. 21-SJ-83,  
10 to this Board on January 5, 1984.

11 IX

12 Any Conclusion of Law which should be deemed a Finding of Fact is  
13 hereby adopted as such.

14 From these Findings the Board comes to these

15 CONCLUSIONS OF LAW

16 I

17 The West Sound Marina is regulated by the San Juan County Master  
18 Program (SJCMP) and the Shorelines Management Act (SMA). The services  
19 and moorage it provides, and can provide, is preferred over the  
20 proliferation of individual docks in the area. SJCMP Section 5.13.

21 II

22 The application drawing as submitted, and with added markings, is  
23 unclear regarding any intention for utilizing a new U-shaped float on  
24 the west side of the marina. Any applicant has an obligation to  
25 submit a completely unambiguous project drawing to the regulatory

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW & ORDER  
SHB No. 84-2

1 authority charged with considering substantial development permit  
2 applications. While the outline for the proposed covered moorage in  
3 this area features three 3-pile dolphins cornering a covered moorage,  
4 any reviewer of this drawing could conceivably see a U-shaped float  
5 and the dolphins and perceive the footprint of the covered storage  
6 structure would be something less than the 37 foot by 100 foot exactly  
7 indicated on the outline.

### 8 III

9 West Sound Marina's application proposal does not extend the  
10 southerly limits of the marina beyond the limit-line required by this  
11 Board in its decision in SHB 79-32. In that decision the Board  
12 considered the width of a navigational distance in the passage between  
13 the outer edge of the then-proposed breakwater and Government Island.  
14 The current proposal here under review does not have the same  
15 proximity to Government Island as the breakwater and may or may not  
16 impose a navigational constraint.

17 If the Board of Commissioners chooses to place southern limits on  
18 a proposed marina expansion it must do so based on relevant provisions  
19 in the SJSMP and the facts presented.

### 20 IV

21 SJSMP Sections 4.03, 4.07, 5.13, and 5.16 bear upon the permit  
22 application and the proposed projects uses, view impacts, and  
23 navigational impacts.

24 Sections 4.03 and 4.07 describe the nature of development  
25 permissible in suburban and aquatic designations, respectively. Some

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW & ORDER  
SHB No. 84-2

1 rearrangement of floats and expansion fits within these designation  
2 requirements.

3 Section 5.13 covers policies and regulations for marinas. Policy  
4 1 (and regulations 1, 2 and 3) requiring design and operation of  
5 marinas be directed toward minimizing potential adverse effects on  
6 marine life, the shore process corridor and its operating systems, and  
7 adjacent areas and activities is met through some rearrangement and  
8 expansion of floats. General Regulation 16, providing for minimizing  
9 adverse effects on the scenic qualities of the shorelines, is met by  
10 disallowing the proposed covered moorage and may be met by placing  
11 some limits on expansion in this substantial development permit.  
12 Ultimately, expansion is limited by site constraints and the property  
13 limits.

14 Section 5.16 of the SJSMP provides for recreational developments  
15 in the shoreline which meet reasonable demands from nearby population  
16 centers as well as from county residents (Policy 2). The permitted  
17 rearrangement and expansion of floats meets this test and others  
18 enumerated in Section 5.16.

19 Other Sections of the SJSMP which caused the County to review and  
20 reject the covered moorage are not at issue here. Appellant did not  
21 appeal the county's rejection of the covered moorage requested in its  
22 permit application.

23 v

24 A permit granting authority must consider any proposed alterations  
25 to a project at the application stage so revisions can be fairly

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW & ORDER  
SHB No. 84-2

1 deliberated. If a permit is approved and alterations are thereafter  
2 desired, a formal amendment or a new permit application is in order.  
3 Alterations which proposed a different development and/or increase  
4 over-water coverage certainly cannot be considered under a specific  
5 pending application. The letter of request for reconsideration of the  
6 Commissioners' decision, which appellants attorney wrote in  
7 mid-November of 1983, does not meet the revision, amendment, or new  
8 application process standards. WAC 173-14-064. The Board of  
9 Commissioners is under no obligation to review a proposal not actually  
10 before it. The Shorelines Hearings Board similarly is not obliged to  
11 rule on belated proposals which may expand or markedly alter a  
12 considered permit.

#### 13 VI

14 The permit decision made by San Juan County was within their  
15 prerogatives and authority to condition and approve substantial  
16 development permits. Their conclusions about southerly expansion  
17 limits, relying on guidance in SHB No. 79-32, may be somewhat  
18 misplaced, however (see Conclusion of Law III). Any alterations in  
19 floats beyond the limits-of-expansion lines set forth in the permit  
20 issued by San Juan County which may be desired by appellant can be set  
21 forth in a new permit application. The county's decision on permit  
22 No. 21-SJ-83 should be affirmed.

#### 23 VII

24 Any Finding of Fact which should be deemed a Conclusion of Law is  
25 hereby adopted as such.

26 From these Conclusions the Board enters this  
27



ORDER

The action of San Juan County conditionally approving Substantial Development Permit Application No. 21-SJ-83 is affirmed.

DONE at Lacey, Washington this 29<sup>TH</sup> day of May, 1984.

SHORELINES HEARINGS BOARD

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